



# Senate

General Assembly

**File No. 490**

February Session, 2022

Senate Bill No. 469

*Senate, April 14, 2022*

The Committee on Government Administration and Elections reported through SEN. FLEXER of the 29th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

## **AN ACT CONCERNING THE USE OF COMPETITIVE PROCUREMENT FOR STATE CONTRACTS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 4-212 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2022*):

3 As used in this section and sections [4-212] 4-213 to 4-219, inclusive:

4 (1) "Competitive negotiation" means a procedure for contracting for  
5 services in which (A) proposals are solicited from qualified persons,  
6 firms or corporations by a request for proposals or any other form of  
7 competitive procurement, and (B) changes may be negotiated in  
8 proposals and prices after being submitted.

9 (2) "Competitive procurement" means the purchase or acquisition of  
10 services by a state agency through an open and fair process, where all  
11 responsible entities have an equal opportunity to pursue, and  
12 potentially be selected for, a contract to provide the state agency with

13 the desired services.

14 [(2)] (3) "Personal service contractor" means any person, firm or  
15 corporation not employed by the state, who is hired by a state agency  
16 for a fee to provide services to the agency. The term "personal service  
17 contractor" [shall] does not include (A) a person, firm or corporation  
18 providing "contractual services", as defined in section 4a-50, as  
19 amended by this act, to the state, (B) a "consultant", as defined in section  
20 4b-55, (C) a "consultant", as defined in section 13b-20b, (D) an agency of  
21 the federal government, of the state or of a political subdivision of the  
22 state, or (E) a person, firm or corporation providing consultant services  
23 for information and telecommunications systems authorized under  
24 subdivision (3) of subsection (b) of section 4d-2.

25 [(3)] (4) "Personal service agreement" means a written agreement  
26 defining the services or end product to be delivered by a personal  
27 service contractor to a state agency, excluding any agreement with a  
28 personal service contractor that the state accounting manual does not  
29 require to be submitted to the Comptroller.

30 [(4)] (5) "Secretary" means the Secretary of the Office of Policy and  
31 Management.

32 [(5)] (6) "State agency" means a department, board, council,  
33 commission, institution or other executive branch agency.

34 Sec. 2. Section 4-214 of the general statutes is repealed and the  
35 following is substituted in lieu thereof (*Effective October 1, 2022*):

36 Each personal service agreement executed (1) on or after July 1, 1994,  
37 until June 30, 2023, and having a cost of not more than twenty thousand  
38 dollars and a term of not more than one year, and (2) on or after July 1,  
39 2023, and having a cost of not more than fifty thousand dollars and a  
40 term of not more than one year, shall be based, when possible, on  
41 competitive negotiation or competitive quotations.

42 Sec. 3. Section 4-215 of the general statutes is repealed and the  
43 following is substituted in lieu thereof (*Effective October 1, 2022*):

44 (a) Each personal service agreement executed on or after July 1, 1994,  
45 until June 30, 2023, and having a cost of more than twenty thousand  
46 dollars but not more than fifty thousand dollars and a term of not more  
47 than one year, or executed on or after July 1, 2023, and having a cost of  
48 more than fifty thousand dollars and a term of not more than one year,  
49 shall be based on competitive negotiation or competitive quotations,  
50 unless the state agency purchasing the personal services determines that  
51 a sole source purchase is required and applies to the secretary for a  
52 waiver from such requirement and the secretary grants the waiver. Not  
53 later than March 1, 1994, the secretary shall adopt guidelines for  
54 determining the types of services that may qualify for such waivers. The  
55 qualifying services shall include, but not be limited to, (1) services for  
56 which the cost to the state of a competitive selection procedure would  
57 outweigh the benefits of such procedure, as documented by the state  
58 agency, (2) proprietary services, (3) services to be provided by a  
59 contractor mandated by the general statutes or a public or special act,  
60 and (4) emergency services, including services needed for the protection  
61 of life or health. The secretary shall post any approvals of requests for a  
62 waiver received under this section on the State Contracting Portal. Not  
63 later than January 15, 2020, and annually thereafter, the secretary shall  
64 submit a report, in accordance with the provisions of section 11-4a, to  
65 the joint standing committees of the General Assembly having  
66 cognizance of matters relating to appropriations and the budgets of state  
67 agencies and government administration and the State Contracting  
68 Standards Board listing any such waiver requests received during the  
69 prior year and the justification for the grant or denial of such request.

70 (b) [The secretary] Prior to submitting an application to the secretary  
71 for approval of a sole source purchase of audit services, the state agency  
72 shall [immediately] notify the Auditors of Public Accounts of any  
73 [application that the secretary receives for approval of a sole source  
74 purchase of audit services] such intended application and give the  
75 auditors the opportunity to review the application to advise the state  
76 agency and secretary as to whether such services are necessary and, if  
77 so, whether such services could be provided by said auditors.

78 Sec. 4. Subsection (a) of section 4-216 of the 2022 supplement to the  
79 general statutes is repealed and the following is substituted in lieu  
80 thereof (*Effective October 1, 2022*):

81 (a) No state agency may execute a personal service agreement having  
82 a cost of more than fifty thousand dollars or a term of more than one  
83 year, without the approval of the secretary. A state agency may apply  
84 for an approval by submitting the following information to the  
85 secretary: (1) A description of the services to be purchased and the need  
86 for such services; (2) an estimate of the cost of the services and the term  
87 of the agreement; (3) whether the services are to be on-going; (4)  
88 whether the state agency has contracted out for such services during the  
89 preceding two years and, if so, the name of the contractor, term of the  
90 agreement with such contractor and the amount paid to the contractor;  
91 (5) whether any other state agency has the resources to provide the  
92 services; (6) whether the agency intends to purchase the services by  
93 competitive negotiation and, if not, why; and (7) whether it is possible  
94 to purchase the services on a cooperative basis with other state agencies.  
95 The secretary shall approve or disapprove an application [within] not  
96 later than fifteen business days after receiving it and any necessary  
97 supporting information. [, provided if the secretary does not act within  
98 such fifteen-day period the application shall be deemed to have been  
99 approved. The secretary shall immediately notify the Auditors of Public  
100 Accounts of any application which the secretary receives] Prior to  
101 submitting an application for approval of a personal services agreement  
102 for audit services to the secretary, the state agency shall notify the  
103 Auditors of Public Accounts of such intended application and give said  
104 auditors an opportunity to review the application during such fifteen-  
105 day period and advise the state agency and secretary as to whether such  
106 audit services are necessary and, if so, could be provided by said  
107 auditors.

108 Sec. 5. Subsection (a) of section 4-217 of the general statutes is  
109 repealed and the following is substituted in lieu thereof (*Effective October*  
110 *1, 2022*):

111 (a) [Not later than March 1, 1994, the] The Secretary of the Office of  
112 Policy and Management shall establish standards for state agencies to  
113 follow in entering into personal service agreements. The standards shall  
114 include, but not be limited to, provisions for: (1) Evaluating the need to  
115 use a personal service agreement, (2) developing a request for proposals  
116 or any other form of competitive procurement, (3) advertising for  
117 personal service contractors, (4) evaluating submitted proposals, (5)  
118 selecting a personal service contractor, including compliance with  
119 section 4a-60g, (6) systematically monitoring and evaluating personal  
120 service contractor performance, (7) documenting the entire process for  
121 selecting and managing personal service contractors, and (8) carrying  
122 out any other aspect of such process.

123 Sec. 6. Subsection (a) of section 4-218 of the general statutes is  
124 repealed and the following is substituted in lieu thereof (*Effective October*  
125 *1, 2022*):

126 (a) Not later than October 1, 2009, and annually thereafter, the  
127 secretary shall submit a report to the General Assembly indicating (1)  
128 for each personal service agreement, pursuant to sections 4-214 to 4-216,  
129 inclusive, as amended by this act, and executed during the preceding  
130 fiscal year, (A) the name of the personal service contractor, (B) a  
131 description of the services provided, (C) the term and cost of the  
132 agreement, and (D) the method of selecting the personal service  
133 contractor; and (2) for each such agreement either executed or otherwise  
134 in effect during the preceding fiscal year, (A) the amount of all payments  
135 made during the preceding fiscal year to the personal service contractor,  
136 [and] (B) the amount of any federal or private funds allocated for such  
137 payments, and (C) the total amount of all such payments.

138 Sec. 7. Section 4a-50 of the general statutes is repealed and the  
139 following is substituted in lieu thereof (*Effective October 1, 2022*):

140 When used in this chapter, unless the context indicates a different  
141 meaning:

142 (1) "State agency" includes any officer, department, board, council,

143 commission, institution or other agency of the Executive Department of  
144 the state government;

145 (2) "Supplies", "materials" and "equipment" mean any and all articles  
146 of personal property furnished to or used by any state agency, including  
147 all printing, binding, publication of laws, stationery, forms, and reports;

148 (3) "Contractual services" means any and all laundry and cleaning  
149 service, pest control service, janitorial service, security service, the rental  
150 and repair, or maintenance, of equipment, machinery and other state-  
151 owned personal property, advertising [and photostating,  
152 mimeographing,] and other service arrangements where the services are  
153 provided by persons other than state employees;

154 (4) "Competitive bidding" means the submission of prices by persons,  
155 firms or corporations competing for a contract to provide supplies,  
156 materials, equipment or contractual services, under a procedure in  
157 which the contracting authority does not negotiate prices;

158 (5) "Competitive negotiation" means a procedure for contracting for  
159 supplies, materials, equipment or contractual services, in which (A)  
160 proposals are solicited from qualified suppliers by a request for  
161 proposals or any other form of competitive procurement, and (B)  
162 changes may be negotiated in proposals and prices after being  
163 submitted;

164 (6) "Competitive procurement" means the purchase or acquisition of  
165 services by a state agency through an open and fair process, where all  
166 responsible entities have an equal opportunity to pursue, and  
167 potentially be selected for, a contract to provide the state agency with  
168 the desired services;

169 [(6)] (7) "Bidder" means a person, firm or corporation submitting a  
170 competitive bid in response to a solicitation or any other form of  
171 competitive procurement; and

172 [(7)] (8) "Proposer" means a person, firm or corporation submitting a  
173 proposal in response to a request for proposals or any other form of

174 competitive procurement.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2022</i>	4-212
Sec. 2	<i>October 1, 2022</i>	4-214
Sec. 3	<i>October 1, 2022</i>	4-215
Sec. 4	<i>October 1, 2022</i>	4-216(a)
Sec. 5	<i>October 1, 2022</i>	4-217(a)
Sec. 6	<i>October 1, 2022</i>	4-218(a)
Sec. 7	<i>October 1, 2022</i>	4a-50

**GAE**      *Joint Favorable*

*The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.*

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### **OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:** None

### **Explanation**

The bill expands the types of procurement methods that state agencies may use when seeking to enter personal services agreements (PSAs) and contractual services contracts. This has no fiscal impact as it is not anticipated to impact the value of those contracts.

### **The Out Years**

**State Impact:** None

**Municipal Impact:** None



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**OLR Bill Analysis****SB 469****AN ACT CONCERNING THE USE OF COMPETITIVE PROCUREMENT FOR STATE CONTRACTS.****SUMMARY**

This bill expands the types of procurement methods that state agencies may use when seeking to enter personal services agreements (PSAs) and contractual services contracts. It allows the agencies to use “competitive procurement” (i.e., an open and fair process, as defined in the bill) as an alternative to using requests for proposals (RFPs) to solicit these procurements.

For PSAs executed on or after July 1, 2023, and lasting for up to one year, the bill further increases state agencies’ procurement flexibility by increasing the cost threshold at which they must use competitive solicitation methods to enter into the PSA. Both of these changes also generally apply to POS (purchase-of-service) contracts, as by law these contracts are subject to the same requirements as PSAs (see BACKGROUND).

The bill also expands the contents of the Office of Policy and Management (OPM) secretary’s annual PSA report to the legislature, which he must submit by October 1 each year. For PSAs executed or otherwise in effect during the previous fiscal year, existing law requires him to report, among other things, the amount of all payments to each individual contractor and the amount of federal and private funds allocated for them. The bill requires him to additionally report the total amount of all PSA payments (§ 6).

Additionally, the bill requires the requesting state agency, rather than the OPM secretary, to notify the state auditors about certain PSAs for audit services. Lastly, it makes technical changes, including removing

obsolete language.

EFFECTIVE DATE: October 1, 2022

## **§§ 1, 5 & 7 — COMPETITIVE PROCUREMENT**

### ***PSAs (§§ 1 & 5)***

The law generally requires state agencies to use competitive negotiation or competitive quotation when entering into a PSA that exceeds certain cost thresholds or lasts for more than one year. (The bill also increases the thresholds at which these requirements apply, see below.)

Current law defines “competitive negotiation” as a contracting procedure in which an agency (1) issues an RFP and (2) may negotiate with respondents for post-submission changes to proposals and prices. The bill broadens this definition to additionally allow agencies to solicit proposals using competitive procurement, rather than only by RFP. The bill defines “competitive procurement” as the purchase of services by a state agency through an open and fair process where all responsible sources have an equal opportunity to pursue, and possibly be selected for, a contract. As with existing law for RFPs, proposals received under a competitive procurement solicitation may be negotiated post-submission.

Existing law requires the OPM secretary to establish standards that state agencies must follow when entering into PSAs, including standards for developing RFPs. The bill requires that the standards additionally include provisions for developing forms of competitive procurement besides RFPs.

### ***Contractual Services (§ 7)***

The bill makes a parallel change to the definition of competitive negotiation that applies to contractual services purchases made by state agencies. It expands this definition to additionally allow agencies to solicit contractual services proposals using competitive procurement, rather than only by RFP as under current law. By law, contractual services generally must be awarded through competitive bidding or

competitive negotiation (CGS § 4a-57).

“Contractual services” include laundry and cleaning; pest control; janitorial service; pest control; security; advertising; renting, repairing, and maintaining state-owned personal property; and other service arrangements where services are not provided by state employees.

Existing law’s requirements for competitive bidding or negotiation also apply to supplies, materials, and equipment purchased by state agencies. However, because the bill’s definition of “competitive procurement” refers only to services, it appears that the bill makes this procurement method available only to contractual services.

## **§§ 2-4 — PSA PROCUREMENTS**

### ***Cost Thresholds***

The law prohibits state agencies from executing a PSA costing more than \$50,000 or lasting longer than one year without the OPM secretary’s approval. For PSAs with a term of one year or less, current law requires agencies to use competitive negotiation or competitive quotations (1) when possible, for PSAs costing up to \$20,000, and (2) for each PSA that costs more than \$20,000 and up to \$50,000, unless the purchasing agency receives a waiver from the OPM secretary to allow a sole source purchase.

The bill increases both of these thresholds for PSAs executed on or after July 1, 2023. Specifically, it increases, from \$20,000 to \$50,000, the maximum cost of a PSA lasting one year or less for which agencies must use competitive negotiation or quotations when possible. It makes a conforming change by requiring these procurement methods for PSAs that cost more than \$50,000 and last for up to one year, unless the OPM secretary grants the sole source waiver described above.

For PSAs requiring the OPM secretary’s approval (i.e., those with a term of more than one year or costing more than \$50,000), existing law requires him to act on the application within 15 days after receiving it. The bill eliminates a provision in current law that deems the application approved if he does not act within this time period.

**Audit Services**

Existing law requires that the state auditors be given an opportunity to review certain PSA applications for audit services and advise whether they are necessary and, if so, could be provided by the auditors. This requirement applies to audit services PSAs (1) costing more than \$50,000 or lasting for more than one year or (2) for which the purchasing agency requests a sole source procurement waiver from the OPM secretary (see above).

Current law requires the secretary to immediately notify the auditors of these applications upon receipt. The bill instead requires the purchasing agency to notify the auditors of these applications before submitting them to the OPM secretary. It requires the auditors to advise both the purchasing agency and the secretary (rather than only the secretary as current law provides) of the need for the services and whether the auditors could provide them.

**BACKGROUND****POS Contracts**

By law, a POS contract is one between a state agency and a private provider organization or municipality to obtain direct health and human services for agency clients and generally not for administrative or clerical services, material goods, training, or consulting service. The definition does not include a contract with an individual. The law subjects POS contract requirements to the same procurement requirements as PSAs (CGS § 4-70b(a) & (e)).

**COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable

Yea 12    Nay 6    (03/29/2022)